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To: [Comments_Regulation](#)
Subject: Attention: BSA-DOEP Database
Date: Friday, February 04, 2011 5:31:30 PM

Attention: BSA-DOEP Database

Ladies and Gentlemen:

FinCEN has issued a comment request regarding its proposed collection of significant amounts of new data for its Designation of Exempt Person Report (DOEP).

The exemption process was only recently revised, and any further modifications or revisions threaten to reduce the number of filers willing to utilize the exemption process, which is not in line with FinCEN's previously stated goals of increasing DOEP usage, as recommended by Government Accountability Office reports. All additional new fields are disincentives to using the exemption process.

FinCEN's notice contains an important statement, which any industry insider would consider to be false: "This notice does not propose any new regulatory requirements or changes to the requirements related to designation of exempt person reporting, but rather seeks input on technical matters as we transition from a system originally designed for collecting paper forms to a modernized IT environment for electronic reporting." Everyone in the industry knows that when FinCEN changes a form in any way, this effectively and permanently changes the regulatory requirements. Examiners will judge filing institutions based on any and all changes of any type – therefore every change of any type is a changed regulatory requirement. Further, the changes proposed for this form are not minor, technical changes, but instead are a general overhaul of regulatory requirements for DOEPs. Thus, since the statement is false, this update to the form should have to go through the regular rulemaking process, not simply an announcement and request for comments.

FinCEN has again chosen to invite comments only on the less critically important aspects of its proposal, while not requesting any comment on the major changes it is proposing. FinCEN has requested comments on only five points, which are addressed herein as follows.

(a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility: The information is clearly not necessary for the proper performance of the functions of the agency, and the information will not have practical utility, as explained below.

(b) The accuracy of the agency's estimate of the burden of the collection of information: The request for comments contains a gross underestimate of the time burden of DOEPs, which is stated as, "Estimated Reporting Burden: Average of 60 minutes per report and 15 minutes recordkeeping per filing" with a "Total Annual Reporting and Recordkeeping Burden of 38,750 hours." In our

experience, a typical DOEP costs at least: 4 hours to research (including contacting the customer for certain documents required to establish eligibility), 20 minutes to complete, 30 minutes for a secondary review by another person, 10 minutes for a final review, 10 minutes to e-file the DOEP, 5 minutes to check the status on E-filing and/or receive and retain a confirmation email, 30 minutes for an auditor to review, 10 minutes to obtain supporting documentation for the auditor, and later, 10 minutes to obtain supporting documentation for regulator examiners for a total of 6 hours and 5 minutes of lost labor per DOEP. (Lost labor refers to labor that generates no income for the filing institution).

(c) Ways to enhance the quality, utility, and clarity of the information to be collected: There does not appear to be a regulatory requirement or need for FinCEN to achieve the specified enhancement.

(d) Ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology: FinCEN should reduce reporting burden by championing the aim of having the filing threshold for CTRs increased by Congressional action or another rulemaking process, which would reduce the need for DOEPs for customers who frequently conduct transactions totaling from \$10,000.01 to \$20,000.00.

(e) Estimates of capital or start-up costs and costs of operation, maintenance and purchase of services to provide information: As FinCEN is well aware, such estimates are generally unavailable and unobtainable, but clearly, any proposal that will cost for-profit institutions, which are businesses in business to make money, an "Estimated Total Annual Reporting and Recordkeeping Burden" of "38,750 hours," is an expensive way to provide information. Using a very conservative estimate, each filed DOEP costs a typical institution at least \$100, in consideration of the labor required to research, complete, review repeatedly, file, audit, etc. Thus, FinCEN proposes to cause the industry to spend, out of its own pockets with no related income or incentive, at least \$387,500 million dollars per year. This could be avoided simply by raising the CTR threshold and adjusting it for inflation, given that it has been frozen at \$10,000 for many, many years. This is another example of how over-regulation by the federal government is bankrupting this country.

Unnecessary and entirely new inventions for the DOEP, include: Middle initial (middle name for electronic filers): This will cost filing institutions significant amounts of increased expenses, by inventing a requirement to OBTAIN and file a middle name. FinCEN should not assume that filing institutions already know the middle names of their customers. Most institutions require a new customer, at the time of account opening, to provide a first and last name, and sometimes a middle initial, but the entire middle name is almost never known. This requirement should be eliminated from the proposal.

Suffix: Again, most institutions would not have any reason to obtain or have this information, other than to satisfy the requirement invented by the addition of this field on the DOEP. This field should not be added.

Alternate name, e.g., AKA—Individual or DBA – again, a new regulatory requirement is created merely by inclusion of a supposedly "clarifying label" for an existing field, which is really a concept change for that field. Currently, filers must

identify only DBA names, i.e., John Dough DBA Currency Express. Now, FinCEN wants all aliases and nicknames for individuals too? This will lead to a massive amount of research to ensure known aliases are not wrongfully omitted. The proposal that institutions will have to report that "William" is AKA "Will, Willie, Buddy, and Mac," is absurd, as well as expensive for filing institutions.

This change should be eliminated from the proposal.

Occupation or type of business: This field represents the invention of a new regulatory requirement to report this data to FinCEN. While an institution would typically obtain and review this information prior to filing, there is no current requirement to report this on the DOEP. This change should be eliminated from the proposal.

NAICS Code for Occupation or type of business – The vast majority of filing institutions do not use NAICS Codes (arbitrary, six digit codes, of which there are at least hundreds). That field alone would cost a lot of time and effort for most institutions to implement, even if only using it for the DOEPs. Further, the selection of which of the hundreds of NAICS codes to apply to an account, customer, or DOEP, is highly subjective – which will lead to criticisms from examiners for choosing the "wrong" NAICS code. Anyway, why would this code be useful to law enforcement? Put simply: It isn't. This is purely for FinCEN's statistical tracking/research. This change should be eliminated from the proposal. Arbitrary inclusions of hard-to-get data will drive down the use of exemptions, which is supposedly not what FinCEN has been trying to accomplish.

FinCEN has not provided enough information on the meaning of the phrase "Derived through third party data as enhanced data" in order to allow meaningful comment. If this data is derived by FinCEN, after filing, then filers need not concern themselves with commenting. If FinCEN expects institutions to derive such data through third parties, then that is a major problem, in terms of expenses. This applies to numerous fields such as the +4 digits at the end of a ZIP code, County, Geocoding data (to obtain MSA, County, and Census Tract), HIFCA coding, HIDTA coding, etc. Therefore, this change should be eliminated from the proposal.

Requirement to indicate the type of TIN: Institutions would have to know and indicate whether a TIN is a TIN, EIN, SSN, or ITIN. Institutions neither have nor need this information. Such changes to the DOEP would generate significant expenses and disincentives for using the DOEP. The utility of such information to law enforcement is nonexistent. For the law enforcement agencies who need to know if a person's TIN is an EIN or SSN or ITIN, they already have the resources necessary to make that determination on their own. This change should be eliminated from the proposal.

E-mail address, Phone Number, and Extension: Why would FinCEN or law enforcement need a phone number or email address for an exempt customer? Why would they be calling them about the DOEP or contacting them via email? These fields are bizarre new reporting requirements. FinCEN's arbitrary inclusion of this personal and private information on the DOEP will inadvertently cause more institutions to choose not to utilize exemptions. This change should be eliminated from the proposal.

Filer information: Designated office e-mail address – Institutions should not be emailed private customer data such as name, address, TIN, etc., - not even the acknowledgment that a person is a customer - and therefore there is no reason to place an email address for a filer contact on the DOEP. This change should be eliminated from the proposal.

Also note that FinCEN should post all comments publicly.

FinCEN needs to take a big step back and reexamine both their motives and the consequences of their actions. FinCEN proposes to cost the industry large sums of money, for little to no apparent value to law enforcement. Its proposal should be entirely withdrawn.

Sincerely Submitted.